

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN CINDY YOUNKIN**, on April 4, 2001 at 3:00 P.M., in Room 152 Capitol.

ROLL CALL

Members Present:

Rep. Cindy Younkin, Chairman (R)
Rep. Gail Gutsche, Vice Chairman (D)
Rep. Keith Bales (R)
Rep. Dee Brown (R)
Rep. Gilda Clancy (R)
Rep. Aubyn A. Curtiss (R)
Rep. Larry Cyr (D)
Rep. Ron Erickson (D)
Rep. Christopher Harris (D)
Rep. Linda Holden (R)
Rep. Joan Hurdle (D)
Rep. Rick Laible (R)
Rep. Jeff Laszloffy (R)
Rep. Bob Story (R)
Rep. Brett Tramelli (D)

Members Excused: Rep. Rick Dale, Vice Chairman (R)
Rep. Rod Bitney (R)
Rep. Bill Eggers (D)
Rep. Douglas Mood (R)
Rep. David Wanzienried (D)

Members Absent: None.

Staff Present: Holly Jordan, Committee Secretary
Larry Mitchell, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 510, 4/2/2001
Executive Action: SB 510

HEARING ON SB 510

Sponsor: SEN. COREY STAPLETON, SD 10, Billings

Proponents: Jim Mockler, Montana Coal Council
Tom Ebzery, Billings
Don Allen, WETA
Joe Lamson, OPI
Dick Crofts, Commissioner of Higher Education
Bob Vogel, Montana School Board Association (MSBA)

Opponents: REP. NORMA BIXBY, HD 5, Lame Deer

Opening Statement by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 0.3}

SEN. COREY STAPLETON, SD 10, Billings, stated this bill has to do with the money which will be produced from the leasing of the federal land traded for the Crown Butte Mine Lands near Cooke City. He handed out an amendment **EXHIBIT(nah76a01)** and explained it. He asked for a do concur.

Proponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 4.5}

Jim Mockler, Montana Coal Council, stated this bill is a good idea. The coal will likely come with the contingency of where the royalties are to go. He stated that it would be wise to delete sections 2 of the bill because it is guessing on contingencies. He also asked for an amendment on page 5, line 6. He asked for a do concur.

Tom Ebzery, Billings, read from article 10, section 2, of the Constitution. He went over the constitutionality of the bill. He urged a do concur.

Don Allen, WETA, stated the bill makes sense in terms of getting in the curve and exercising an option that could be very useful in helping some of the problems that the state has. It is part of a positive thing that could happen. He asked for a do concur.

Joe Lamson, OPI, stated that he is concerned with the removal of section 2. It's important that these lands are for the purpose of education (K - 12 and the university system) and those are the purposes under section 2.

Bob Vogel, MSBA, stated MSBA is very supportive of section 2 and the bill in it's current form.

Dick Crofts, Commissioner of Higher Education, stated that he likes the bill and likes it a lot better with section 2 included. He urged the committee to dedicate these funds to public education.

Opponents' Testimony:

{Tape : 1; Side : A; Approx. Time Counter : 14.5}

REP. NORMA BIXBY, HD 5, Lame Deer, stated that she is opposing SB 510 on behalf of the Northern Cheyenne Tribe. There are possible impacts to the tribe with the passage of this bill. The tribe has sent letters to the Governor regarding this matter. The tribe has strong ties to the Otter Creek area. There are burial grounds and ceremonial medicinal plants on the land in question. For this reason the tribe strongly opposes the transfer of the lands. The Northern Cheyenne reservation has been re-designated a class 1 air shed. This classification guarantees pure air for the reservation and the air quality will be protected at all costs. It would be sad to see the loss of funds going to litigation. This type of legislation is irresponsible and not in the best interests of the tribe or the state. There is still time for study and negotiation on this issue. She asked the committee to kill this piece of bad legislation.

Questions from Committee Members and Responses:

{Tape : 1; Side : A; Approx. Time Counter : 17.1}

REP. ERICKSON asked **Mr. Mockler** where are these lands and how much acreage is involved? **Mr. Mockler** stated that he does not believe that is relevant. **REP. ERICKSON** stated that it is relevant because there is an issue of impacts on the tribes. A map was handed out to the committee **EXHIBIT (nah76a02)**.

REP. CURTISS asked **Mr. Ebzery**, given the high quality of the coal in the area, how real would be a threat of pollution? **Mr. Ebzery** stated MONTCO had at one time received an air quality permit for over 10 years right across the river from the Northern Cheyenne reservation. These lands are southeast from Ashland and further away, probably 10 to 15 miles, from the actual reservation boundaries. The prevailing winds would be southeast and west away from the Northern Cheyenne reservation. **REP. CURTISS** asked is there interest right now, perhaps a mine mouth development or something, in that area? **Mr. Ebzery** stated, several proposals or

concepts have emerged from this. There is also the possibility of locating a plant east of Miles City using the coal from those Otter Creek tracks. The coal is a super compliant coal. The coal is the highest in BTU and the lowest in sulphur in Montana and it would meet clean air act standards.

REP. CURTISS asked **Mr. Mockler** are there tax implications where the higher compliant coal is? Is there more interest in developing coal that is of lower quality? **Mr. Mockler** stated there are no firm plans at this time to develop any of that area. It will take awhile to start those developments. This bill does not propose any development.

REP. LAIBLE asked **SEN. STAPLETON** if he would like to get rid of section 2 in it's entirety. **SEN. STAPLETON** stated he echos what the education folks are saying. Section 1 and 2 contradict each other. It would be good if the committee could find a way to reconcile the two sections. **REP. LAIBLE** asked, regarding the fiscal note, why would the land become School Trust Land by default? If it was a gold mine would the money still go to the School Trust? **SEN. STAPLETON** stated no and deferred the question to **Mr. Ebzery**. He stated if the Crown Butte Mine would have gone through then certain royalties would have accrued on section 16 of 36 to the state. Because that mine did not occur the revenues are foregone so the state felt they should get something in return for giving up those revenues. Unless there is something specific in the transfer agreement anything that comes from the federal government will automatically go to the Land Board.

REP. CLANCY asked **Mr. Ebzery** is there a possibility that the federal government may not transfer the title to the land and only to the minerals? **Mr. Ebzery** stated, what is going to be transferred is mineral rights, not land. Those could either be under federal, state or private surface. They are the coal rights. Section 3 of the bill will have to be amended to say mineral rights. **REP. CLANCY** asked, does all of the bill have to be amended to take out the language that specifically refers to land? **Mr. Ebzery** stated yes.

REP. ERICKSON asked **Mr. Ebzery** why don't sections 1 and 2 work together. Is it because of the language on page 1, line 26, "purposes provided in the transfer." Is it the case that we don't know what the purposes provided in the transfer are or is there already language out there on purposes provided in the transfer? **Mr. Ebzery** stated that language has not been developed and it would be developed at the time that the Secretary of the Interior, if she chose to make this exchange, would put in there. **REP. ERICKSON** asked, if we just lost section 2 without saying something about education in section 1 we wouldn't have anything,

right? **Mr. Ebzery** stated that makes sense. He suggested that some words be put in that discuss education if that is the intent of the legislature.

REP. ERICKSON asked **SEN. STAPLETON** to address **REP. BIXBY's** concerns including rights in terms of other uses of that land. **SEN. STAPLETON** stated air quality is a very important issue. This bill is a long-range planning tool. The air quality issue is outside the context and ought to be considered with those tribal governments. The latent rights have to be part of the language also. The scope and the intent of this bill is to lay the groundwork so that good things can follow.

REP. STORY asked **Commissioner Crofts** if we were to put the education component in the bill would there be some mention of both K - 12 and higher education? Is that what you were asking? **Commissioner Crofts** stated that is correct. **REP. STORY** asked, is the board happy with the way the Land Board is managing the trust lands that goes to the university units? **Commissioner Crofts** stated that the board is currently seeking more information about that question. Officially the board has not taken a position.

REP. STORY asked **Mr. Ebzery** if the federal government transferred these mineral royalties to the state without putting restrictions on them then would they default into the trust? **Mr. Ebzery** stated that is correct. **REP. STORY** asked, if they do put restrictions on them the use of the money might be for some other purpose? **Mr. Ebzery** stated, rather than using the word "restrictions" he would use the words "special purposes". **REP. STORY** asked, is the language on page 1, lines 25 - 26, kind of extraneous isn't it? **Mr. Ebzery** stated, that is why you should delete section 2 and put some new language in section 1 with purposes spelled out. **REP. STORY** stated, if the purposes are already laid out in the transfer then anything the legislature puts in the bill doesn't apply and if the purposes aren't laid out it goes into the trust. **Mr. Ebzery** stated the are not because a transfer document has not been prepared. The purpose of the bill is that it would not go to the School Trust section and be administered by the Land Board in their normal course of business. The Land Board would administer it but they would have some direction in where it would go.

REP. LASZLOFFY asked **Mr. Mockler** are there any other mineral resources involved here that could be developed. **Mr. Mockler** stated no, there is just coal.

REP. LASZLOFFY asked **Mr. Ebzery** what is the need for this bill at this point? If the mineral rights, by default, go to the School

Trust why do we need to lay this out? **Mr. Ebzery** stated the intent of the bill is to spend the money in a little more creative manner than what is currently be done in the disposition of School Trust Lands. **REP. LASZLOFFY** asked is that constitutional? **Mr. Ebzery** stated that he was told by Mr. Petesch that article 10, section 3, paragraph 4, of the Constitution says that all of the revenue that comes from property granted by the United States will automatically go for general education purposes unless a special purpose is indicated in the transfer agreement. This bill would be guidance to the governor for when she is doing her executive order.

REP. BALES asked **Mr. Ebzery** which takes precedence, the coal rights or the oil and gas rights? **Mr. Ebzery** gave an example. It is his understanding that these things are worked out jointly. The precedence dates from the time of the lease. **REP. BALES** stated, there is probably some coal bed methane in the coal seams which the state is given. Is the state going to have problems of issuing coal leases because of the possibility of methane leases? **Mr. Ebzery** stated, that would be an issue that would come up during the stage of gathering data on environmental impacts. If there was an inherent conflict it might restrict the size of the tract, etc.

REP. BALES asked **REP. BIXBY** are there any maps showing burial grounds in that area? **REP. BIXBY** stated, in the information received from a ceremonial person evidentially they do have some documents or information where those are located. **REP. BALES** stated, to his knowledge there isn't anyplace in that area where it is documented that there is anything left that would be an indication of any burial ground. **REP. BIXBY** stated, probably a lot of grave robbing has taken place. There has been a sun dance site in that area as well. There are some religious connections to the land.

REP. HURDLE asked **REP. BIXBY** how could the Cheyenne Tribe be brought to the negotiation table so that their burial sites and medicinal plants, etc., can be protected? **REP. BIXBY** stated they would like to just be consulted and included in the discussion.

REP. YOUNKIN asked **Mr. Mockler** if the surface is not conveyed to the state is that retained by the federal government? **Mr. Mockler** stated there are a variety of owners of the land. **REP. YOUNKIN** asked what the value of the coal is. **Mr. Mockler** deferred the question to **Mr. Ebzery** who stated it is his understanding that the governor's office feels there is at least \$100,000,000 value. **REP. YOUNKIN** stated \$100,000,000 for the

coal that the state of Montana would get in exchange for Crown Butte which is worth about \$700,000,000. **Mr. Ebzery** stated yes but the Cooke City Highway has to be fixed also.

REP. HURDLE asked **SEN. STAPLETON**, doesn't it seem fair that the Cheyenne should be included in this somehow? Shouldn't there be something specific in the bill regarding talking with the tribe? **SEN. STAPLETON** stated he has no problem with consulting with the tribe.

REP. LASZLOFFY asked **SEN. STAPLETON** would that issue be something better addressed by the federal government and those terms could be included in the transfer agreement? **SEN. STAPLETON** stated that is possible. This bill provides guidance to the governor and gives leverage to her during discussions with the federal government.

Closing by Sponsor:

{Tape : 1; Side : A; Approx. Time Counter : 63.5}

SEN. STAPLETON stated a lot of times when you try to do long-range planning it is hard to know all of the variables. This is a great idea. He asked for a do concur.

EXECUTIVE ACTION ON SB 510

{Tape : 1; Side : B; Approx. Time Counter : 0.3}

Motion: **REP. GUTSCHE** moved that **SB 510 BE CONCURRED IN.**

Motion: **REP. ERICKSON** moved that **AMENDMENT BE ADOPTED.**

Discussion:

REP. ERICKSON stated the amendment would be a new section 3 which would say, "Planning for the usage of the land exchanged for Crown Butte must include consultation of the Northern Cheyenne Tribe." He explained the amendment.

REP. LAIBLE stated this bill attempts to have something in place so that when this transfer occurs there will be something to work with that is not complicated. He is concerned about adding something that has to do with negotiating with the tribe. If we muddy the water with this language this could take years to resolve.

REP. LASZLOFFY asked **REP. YOUNKIN** in the process of developing these mines will DEQ hold public hearings? **REP. YOUNKIN** stated

yes, there will be an EIS because it will have to be permitted under the Strip and Underground Mine Siting Act. **REP. LASZLOFFY** stated that he does not think the bill is needed. He opposes the amendment as public hearings will be held anyway.

REP. BALES stated he is opposed to the amendment. It is crucial that the governor have the latitude to go on ahead and try and bring this trade together. We have often times seen these negotiations go on for long lengths of time. Northern Cheyenne were on record in Billings in the hearing on coal bed methane adamantly opposing the transfer. At this point if you bring them into the situation it can only delay and possibly completely derail the transfer. The Northern Cheyenne Tribe has less impact to them then the private landowners that own fee title on these lands. Those landowners are not in the bill and they are not part of the amendment.

REP. HURDLE asked the committee to seriously consider the amendment. The tribe has a long historical interest in the area.

REP. YOUNKIN read from the Antiquities Act of the Human Remains and Burial Site Protection Act. There are places in the law that address the concerns of **REP. BIXBY**. If there are specific things that have archeological significance they have to be addressed in the EIS process.

REP. STORY asked **REP. YOUNKIN** is there a possibility that there has to be an assessment on the transfer in the first place? **REP. YOUNKIN** stated it could be under NEPA but there wouldn't be anything under MEPA.

REP. ERICKSON stated there have been attempts on behalf of the tribe to schedule meetings with the governor. Lets put this into the law so that there will be some consultation. Otherwise a very strong group will be left out at the earliest stages.

Vote: Motion that **AMENDMENT BE ADOPTED failed 8-12 with Cyr, Eggers, Erickson, Gutsche, Harris, Hurdle, Tramelli, and Wanzenried voting aye.**

Motion: **REP. CLANCY** moved that **CONCEPTUAL AMENDMENT TO TAKE THE WORD "LAND" OUT OF THE BILL WHERE IT DOESN'T BELONG BE ADOPTED.**

Discussion:

REP. CLANCY explained the amendment.

REP. YOUNKIN clarified the amendment. She suggested using the language, "The state land or mineral rights or both acquired from the federal government."

REP. STORY stated, if you change the "and" to "or" you cover the whole spectrum.

Mr. Mitchell stated that **REP. STORY** is correct.

REP. YOUNKIN asked **REP. STORY** would that imply that you could do either or? **REP. STORY** stated, just put "properties acquired."

REP. LAIBLE asked would this limit it where coal and coal methane can't be done? If we have the mineral rights can't we use them for whatever would benefit the state?

REP. BALES stated that he doubts that the oil and gas rights are being transferred in this because a lot of the area was homesteaded before 1916.

Mr. Mitchell stated, the language "the property interests acquired from the federal government" would cover what ever it is they might bequeath to the state.

REP. CLANCY asked **Mr. Mitchell** if that means just using the word "or" instead of "and"? **Mr. Mitchell** stated no. That would strike the phrase, "land and mineral rights" and replace it with "property interests."

Substitute Motion: **REP. CLANCY** made a substitute motion that **AMENDMENT USING THE WORDS MR. MITCHELL STATED ABOVE BE ADOPTED.**

Discussion:

REP. CURTISS asked if line 4 of the title will need to be changed.

REP. YOUNKIN stated **Mr. Mitchell** will take care of that.

Vote: Motion **carried unanimously.**

Motion: **REP. STORY** moved that **AMENDMENT STRIKING SECTION 2 AND ADDING LANGUAGE IN SECTION 1 REGARDING EDUCATION BE ADOPTED.**

Discussion:

REP. STORY explained the amendment. Page 1, line 26, after the word "used" strike that language and insert, "for direct funding of education unless otherwise provided for in the transfer agreement." Strike all of section 2.

REP. ERICKSON asked **REP. STORY** what do we have now? Why do we have to put something in the bill that is already going to happen? **REP. STORY** stated, if there is any possibility that you can put the revenue into funding education rather than to putting it into the trust where you can only get the interest off of it that should be done. That is what the amendment is doing.

REP. CURTISS asked **Mr. Mitchell** didn't Montana have a lot of litigation expense relative to the battle over the Crown Butte property in the first place? **Mr. Mitchell** stated he does not recall exactly how the state of Montana was involved in that.

REP. YOUNKIN stated the DEQ was involved simply in permitting the Noranda Gold Mining Company and with the water quality issues under that permit. The state was not involved with any specific litigation on that.

REP. CURTISS asked **Mr. Mockler** was the state involved in litigation relative to the Crown Butte? **Mr. Mockler** stated no.

REP. CLANCY asked **REP. STORY** for an example of what the language "unless otherwise provided for in transfer agreements" means.

REP. STORY stated, one of the issues that the proponents brought up was when the federal government transfers these properties they may say you have them but you have to use the income for purpose "A". **REP. CLANCY** asked, are you saying the federal government may exchange this with strings attached? **REP. STORY** stated, the proponents are saying that is a possibility.

REP. YOUNKIN asked **REP. STORY** if the word "education" includes the university system? **REP. STORY** stated that has always been a subject of debate. **REP. YOUNKIN** stated she thinks it does but she wants to make sure it does.

Substitute Motion: **REP. YOUNKIN** made a substitute motion that **THE AMENDMENT SAY K - 12 AND HIGHER EDUCATION.**

Discussion:

REP. STORY stated he would agree if it included vocational and technical education.

REP. YOUNKIN stated that is part of her substitute amendment.
K - 12, higher, vocational and technical.

Vote: Substitute motion **carried 19-1 with Gutsche voting no.**

REP. YOUNKIN stated **Mr. Mitchell** will fix the language and Title accordingly.

Motion: **REP. LASZLOFFY** moved that **HB 510 BE CONCURRED IN AS AMENDED.**

Motion/Vote: **REP. LAIBLE** moved that **AMENDMENT SB051003.aem BE ADOPTED. Motion carried unanimously.**

REP. LASZLOFFY stated that he does not think the bill is needed. He stated that he will vote for the bill just to get it out of committee.

Vote: Motion that **HB 510 DO PASS AS AMENDED carried 12-8 with Cyr, Eggers, Erickson, Gutsche, Harris, Hurdle, Tramelli, and Wanzenried voting no.**

ADJOURNMENT

Adjournment: 4:30 P.M.

REP. CINDY YOUNKIN, Chairman

HOLLY JORDAN, Secretary

CY/HJ

EXHIBIT (nah76aad)